

FCC MAIL SECTION

Federal Communications Commission

FCC 00-149

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Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)	MM Docket No. 86-440
)	
Achernar Broadcasting Company)	File No. BPCT-860410KP
)	
Lindsay Television)	File No. BPCT-860410KQ
)	
For Construction Permit)	
For a New UHF TV Station on Channel 64)	
at Charlottesville, Virginia)	

MEMORANDUM OPINION AND ORDER

Adopted: April 19, 2000; **Released:** April 28, 2000

By the Commission:

1. This order approves a settlement agreement, filed January 30, 1998, by Lindsay Television and Achernar Broadcasting Company providing for the dismissal of Lindsay's application, the amendment of Achernar's application for channel 64 to specify Charlottesville Broadcasting Corporation (CBC) as the applicant, and the grant of Achernar's amended application. On our own motion, pursuant to 47 U.S.C. § 316, we modify CBC's construction permit to specify operation on channel 19, in lieu of channel 64, subject to express conditions. This action serves the public interest by effectuating congressional intent regarding the reallocation of channel 64 for public safety use and the settlement of comparative broadcast proceedings involving applications filed before July 1, 1997, as directed by 47 U.S.C. §§ 337 and 309(l)(3), respectively.

BACKGROUND

2. In 1986, the Commission designated for comparative hearing five mutually exclusive applications for a construction permit for a new analog television station on channel 64 in Charlottesville, Virginia.¹ The only remaining applicants are Lindsay Television and Achernar Broadcasting Company, both of which were disqualified because operation from their respective transmitter sites was deemed to cause objectionable interference to the radio astronomy activities of the National Radio Astronomy Observatory (Observatory), located in Green Bank, West Virginia.² The D.C. Circuit reversed the Commission, concluding that the Commission's decision rigidly

¹Christopher Gault, 1 FCC Rcd 732 (1986).

²Achernar Broadcasting Company, 6 FCC Rcd 5393 (1991), *recon. denied*, 7 FCC Rcd 1778 (1992).

protecting the Observatory's interests without regard to the competing public interest benefits of providing second local transmission service and additional reception service to the community of Charlottesville was arbitrary and capricious.³

3. Upon remand, Achernar and Lindsay commenced negotiations with the Observatory, and, after numerous engineering studies and intensive investigation of several possible transmitter sites, developed an engineering proposal acceptable to the Observatory that accommodates Charlottesville's need for a second commercial television station and protects certain of the Observatory's astronomy operations from broadcast interference.⁴ Achernar and Lindsay have also reached a settlement agreement in the comparative proceeding providing for their merger into a single applicant, Charlottesville Broadcasting Corporation (CBC), and the grant of a construction permit to that applicant. The settlement agreement initially requested a construction permit for channel 64 but was later supplemented with an alternative request for channel 19. As set forth in greater detail below, the Mass Media Bureau opposes the authorization of a new analog television station on channel 64, but supports the acceptance of the engineering amendments and the grant of a construction permit for a new NTSC television station on channel 19.

4. On August 5, 1997, President Clinton signed the Balanced Budget Act of 1997. Two provisions of that legislation are pertinent to the matters before us. First, to facilitate the resolution of certain pending comparative broadcast cases that could otherwise be resolved through auctions, Section 3002(a)(3), *codified as* 47 U.S.C. § 309(l), provides that, for settlement agreements executed within 180 days after enactment (that is, by February 1, 1998), "the Commission shall . . . (3) waive any provision of its regulations necessary to permit such persons [who filed applications for full service commercial radio or television stations before July 1, 1997] to enter into an agreement to procure the removal of a conflict between their applications." Second, section 3004, *codified as* 47 U.S.C. § 337, directs the Commission to reallocate 24 megahertz of spectrum in the 746-806 MHz band for public safety services and the remaining 36 megahertz for commercial use. The 746-806 MHz band currently comprises television channels 60-69.

5. Pursuant to Section 337, the Commission reallocated television channels 63, 64, 68, and 69 to the fixed and mobile services, and designated this spectrum exclusively for public safety

³ *Achernar Broadcasting Company v. FCC*, 62 F.3d 1441 (D.C. Cir. 1995).

⁴ The engineering proposal involves operation from the Carter's Mountain antenna farm with an antenna designed with a directionalized null to minimize transmission in the direction of the Observatory's Green Bank facility. The applicants have submitted a written agreement formalizing their understanding with the Observatory. See Supplement to Joint Petition for Approval of Settlement Agreement, filed June 24, 1998. To implement the agreement resolving the interference issues with the Observatory, Lindsay and Achernar filed a series of pleadings in late 1997 seeking the short-spacing waivers and translator service necessary to correct the loss of channel 64 service to areas in the station's normally anticipated coverage area. Specifically, Achernar filed a Petition for Leave to Amend and for Waiver of Short-Spacing Rule on November 19, 1997, and Lindsay filed a Petition for Leave to Amend and a Supplement thereto on September 19, and 22, 1997, a Petition for Waiver of Short-Spacing Rules on November 5, 1997; and a Petition for Acceptance of Television Translator Applications and Request for Waivers on December 8, 1997. Lindsay's pleadings as well as Achernar's waiver request pertain to the original proposal for channel 64. In view of our action herein approving the applicants' settlement agreement and modifying on our own motion the construction permit to specify operation on channel 19 in lieu of channel 64, these pleadings may be dismissed.

use.⁵ In doing so, the Commission noted that these channels would continue to be used to provide analog and digital TV broadcasting during the DTV transition period, but that it would not authorize additional new analog full-service stations on channels 60-69.⁶ Instead of summarily dismissing pending applications for these channels, the Commission said that at a latter date it would provide such applicants an opportunity to amend, if possible, to a channel below 60.⁷ It indicated further that all conditions, including the freeze on applications in large metropolitan areas, pertaining to the pending applications and rulemaking petitions would continue to apply, and that freeze waiver requests would be considered on a case-by-case basis. On reconsideration, the Commission affirmed its decision not to authorize new analog television stations on channels 60-69, but indicated that the denial of Lindsay's petition for reconsideration was without prejudice to its pending waiver request for permission to operate a new analog television station on channel 64 in Charlottesville. By Public Notice, other pending applicants/petitioners for the reallocated channels have been afforded a limited opportunity to amend to a channel below channel 60.⁸

6. Also pertinent to consideration of the pending settlement agreement is the enactment of the Community Broadcasters Protection Act of 1999 (CPBA). Signed into law on November 29, 1999, the legislation authorizes low power television licensees to convert the secondary status of their stations into new Class A status, provided certain statutorily-prescribed conditions are met. On December 13, 1999 the Commission notified eligible licensees of the requirements for a Class A designation,⁹ and on March 28, 2000 it adopted rules implementing the statute.¹⁰ As reflected below, the modification of petitioners' construction permit to specify operation on channel 19 will result in the displacement of Station W19BB, a translator station operating on channel 19 in Charlottesville. The licensee of that station, Shenandoah Valley Educational Television, opposes petitioners' settlement agreement on that basis. And, as authorized by Section (c)(2)(1)(B) of the CBPA, codified as 47 U.S.C. § 336(f)(1)(B), Shenandoah has timely submitted a certification of eligibility for Class A Low Power Television Station Status for the channel 19 translator. For the reasons set forth below, however, Shenandoah's timely submission of the certification is not an impediment to approval of a settlement agreement that was pending on November 29, 1999.

⁵ *Reallocation of Television Channels 60-69 (Report and Order)*, 12 FCC Rcd 22953 (1998), *petitions for reconsideration denied*, 13 FCC Rcd 21578 (1998) [Hereafter *Reallocation Reconsideration Order*.]

⁶ *Id.* at 22953-54, 22971 ¶ 40.

⁷ 12 FCC Rcd at 22971-72.

⁸ *Public Notice: Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations*, DA 99-2605, released Nov. 22, 1999.

⁹ *Public Notice: Mass Media Bureau Implements Community Broadcasters Protection Act of 1999*, 96891, released December 13, 1999.

¹⁰ *Establishment of a Class A Television Service (Report and Order)*, FCC 00-115 (adopted March 28, 2000).

THE SETTLEMENT AGREEMENT

7. In addition to resolving the interference issues with the Observatory, Achemar and Lindsay have reached a settlement agreement of the comparative proceeding. Entered into within 180 days of the enactment of the Balanced Budget Act of 1997, and thus subject to the mandatory waiver provision set forth in Section 309(l)(3), the settlement agreement provides for a 50/50 merger of Achemar and Lindsay into a new corporate entity, Charlottesville Broadcasting Company, the dismissal of Lindsay's application, the amendment of Achemar's application to substitute the merged entity as the applicant, and the grant of the amended application. The settlement agreement is contingent on the grant of a construction permit for channel 64 or such other channel as the Commission may select. With regard to channel 64, the Joint Petitioners submit that, despite its reallocation for public safety use, the grant of a construction permit for that channel is consistent with Section 337 of the Act requiring only that all television stations must vacate the portion of the spectrum allocated for public safety use by the end of the digital television transition period. Joint Petitioners urge that this is an appropriate case for waiving the Commission's policy determination not to grant pending applications for TV channels 60-69. They stress that this is one of the oldest unresolved comparative cases, that waiver will bring long-awaited, much needed commercial television service to Charlottesville, and that, in contrast to any other pending application for a reallocated analog television channel, the pending applications for channel 64 (Charlottesville) have been the subject of evidentiary hearings before an Administrative Law Judge, review by the Commission, and judicial review. If awarded a construction permit for channel 64, Joint Petitioners promise to afford the requisite interference protection for public safety service licensees and to cease broadcast operations on channel 64 by the end of the digital transition period, as is required by Section 337.

8. The Bureau opposes the grant of a construction permit for a new analog television station on channel 64 in Charlottesville on the ground that it would be contrary to the Commission's determination in ET Docket No. 97-157 not to authorize any new television stations on channels 60-69. The grant of a construction permit for NTSC channel 64 in Charlottesville is also opposed by the Association of Public-Safety Communications Officials-International, Inc. (APCO). It asserts that petitioners' use of channel 64 would bar public safety use of that channel throughout much of Virginia and the Washington, D.C. metropolitan area, as well as the development of a statewide public service network and the use of paired frequencies on channel 69. In comments filed July 28, 1999, both the Bureau and APCO have confirmed their continuing opposition to authorizing a new analog station on channel 64.¹¹

¹¹ These comments were filed in response to *Achemar Broadcasting Company*, FCC 99I-15 (OGC June 28, 1999), requesting further comments on APCO's contention that operation from channel 64 would adversely impact on public safety. Comments were also sought on the applicants' alternate request, discussed in greater detail below, to operate on channel 19 in lieu of channel 64. In particular, the Bureau was asked to comment on that proposal now that APCO has withdrawn its original opposition to channel 19. Comments were also filed on July 28, 1999, by Shenandoah Valley Educational Television and by Viacom, Inc. Responsive Comments were filed on August 12, 1999 by Lindsay and Achemar, and Reply Comments were filed on August 19, 1999 by Shenandoah. And, on December 2, 1999, Shenandoah filed a Supplement to Comments In Opposition and a Motion to Enter Citizen Comments Into the Record. Lindsay and Achemar filed a Consolidated Opposition on December 16, 1999.

9. Alternatively, Joint Petitioners filed a Supplement to Joint Petition for Approval of Settlement Agreement on June 24, 1998 proposing to operate on channel 19 instead of channel 64 at the same transmitter location and with essentially the same technical proposal. Attached thereto is an agreement reflecting that the Observatory does not object to the substitution of channel 19.¹² In support of channel 19, Joint Petitioners assert that the proposed substitution complies with both the analog table of television allotments and the digital table of television allotments, that the amendment is supported by good cause, as required by Section 73.3522(b) of the rules, 47 C.F.R. § 73.3522(b), and that the Commission has authority to order the channel change on its own motion.¹³ They accordingly ask the Commission to issue an Order to Show Cause why the channel petitioners applied for should not be modified to specify channel 19.¹⁴ Without indicating whether they would prefer channel 19 or channel 64, petitioners state that they will relinquish all claims to channel 64 if they are awarded a construction permit for channel 19.

10. The Bureau initially opposed the amendment based on adjacent channel interference to land mobile operations on channel 18 in Washington, D.C., as did APCO.¹⁵ In response to a subsequent proposal to install filter equipment designed to protect these land mobile operations,¹⁶ APCO has stated that it will withdraw its objections to channel 19, provided Achernar and Lindsay abandon their bid for channel 64 and their license for channel 19 contains certain express conditions.¹⁷ The Bureau has now agreed that these conditions are adequate to protect land mobile service on channel 18, and has withdrawn its objections to channel 19, provided further that a minus offset is included in order to protect NTSC channel 19 allotments in Jacksonville, North Carolina, Kingsport, Tennessee, and Jeanette, Pennsylvania.¹⁸ The Joint Petitioners have indicated their willingness to accept the minus offset, as well as the express conditions requested by APCO,

¹² See Supplement to Agreement, executed June 1, 1998, at ¶ 3.

¹³ See Supplement to Joint Request, filed June 24, 1998, by Achernar and Lindsay, at 2-3; Consolidated Reply to Oppositions, filed July 27, 1998, by Achernar and Lindsay, at 3-4, 14-16; Reply to Viacom Informal Objection, filed September 16, 1998, by Achernar and Lindsay, at 2. See also Responsive Comments of Achernar and Lindsay, filed August 12, 1999, at 2, incorporating by reference the previously filed Consolidated Reply.

¹⁴ See Consolidated Reply to Oppositions, at 8

¹⁵ The proposed transmitter site is less than 102 miles from the land mobile allocation for the Washington, D.C. urbanized area. See *Land Mobile Use of TV Channels*, 23 FCC 2d 325, 343-44 (1970), providing that, in order to protect the assignment of channels 17 and 18 for land mobile use in the Washington, D.C. urbanized area, the Commission will not accept applications for construction permits for adjacent analog channels 16 and 19, if such are within 140 miles of the specified geographic center of the Washington, D.C. urbanized area.

¹⁶ See Reply Comments to Response of APCO, filed October 13, 1998, by Achernar and Lindsay.

¹⁷ See Supplemental Response of APCO to Consolidated Reply to Oppositions, filed December 4, 1998, requesting the following conditions: (1) The station must install and maintain a filter on its channel 19 transmitter providing 75-80 dB attenuation in the 494-500 MHz band (channel 18); and (2) The station must accept interference from current or future 494-500 MHz land mobile facilities operating from base stations located within 50 miles of Washington, D.C., and mobile units operating within 30 miles of their associated base station.

¹⁸ See Mass Media Bureau's Comments, filed July 28, 1999, at 2.

and have reiterated their intent to relinquish all claims to channel 64 if awarded a construction permit to operate a new analog television station on channel 19.

11. Nonetheless, the award of a construction permit for channel 19 is separately opposed by Shenandoah Valley Educational Television (Shenandoah), the licensee of Station W19BB, a translator station operating on channel 19 in Charlottesville that would be displaced if a full-power commercial station is licensed on that channel;¹⁹ and by Viacom, Inc. (Viacom), the ultimate parent of the licensee of WGNT in Portsmouth, Virginia, which has been allocated DTV channel 19. According to the Bureau, neither objection has merit. Citing Commission rules requiring that a displaced translator licensee must modify its channel at its own expense or otherwise eliminate any interference to the operation of a full power television station, the Bureau rejects Shenandoah's objection.²⁰ Petitioners likewise emphasize that Station W19BB is neither a full service station nor one that originates local television programming; they also submit program schedules purportedly reflecting substantial duplication of noncommercial programming offered by another station, whose reception in Charlottesville would be unaffected by the proposed channel switch.²¹ As to Viacom's concern that assigning a new NTSC allotment on channel 19 would foreclose future upgrades of WGNT-DT (Channel 19-Portsmouth), the Bureau indicates that Viacom has no inherent right to expand that station's coverage and that its engineering staff has confirmed that the presence of a new NTSC station on channel 19 at Charlottesville would not detrimentally affect the DTV channel allotment at Portsmouth.

12. Shenandoah and Viacom also oppose the proposed substitution of channel 19 on procedural grounds. The amendment to channel 19, according to Shenandoah, is not supported by good cause, as required by Section 73.3522(b) of the rules, inasmuch as its acceptance would require the addition of new parties and the enlargement of the issues. Because channel 19 is not presently allocated to Charlottesville, Shenandoah asserts that the requested channel switch would require the initiation of both a rulemaking proceeding to amend the analog Table of Allotments and a competitive licensing proceeding to award the permit for that channel. And, in response to the November 22 1999 Public Notice announcing a filing opportunity for certain analog television applications, Shenandoah has tendered for filing an application for a construction permit for a new noncommercial educational station on channel 19. Viacom urges that Petitioner's procedurally deficient request to substitute channel 19 should be dismissed, because it impermissibly short-circuits procedures that provide opportunities for public notice of, and participation in, such proceedings, as well as rules prohibiting the filing of major amendments. In response, Joint Petitioners claim that, given the applicants' concurrence, the Commission has authority to change the channel without further proceedings.²² Citing the absence of any opposition to channel 19 from

¹⁹ We note the letter, dated March 2, 2000, from Thomas J. Bliley, Jr., Chairman, Committee on Commerce, U.S. House of Representatives, to William E. Kennard, Chairman, Federal Communications Commission, concerning this matter and stating that Shenandoah "has for over thirty years provided valuable noncommercial educational programming to the people of Virginia and West Virginia."

²⁰ The Bureau cites 47 C.F.R. §§ 74.702(b) and 74.703(b).

²¹ See Consolidated Reply (Exhibit 5), filed July 27, 1998, by Achernar and Lindsay.

²² See Consolidated Reply to Oppositions, filed July 27, 1998, by Achernar and Lindsay, at 15-16, citing *Channel 16 of Rhode Island, Inc.*, 31 FCC 2d 574 (1971), in which the Commission modified a construction permit to specify operation on a different channel, where the channel change was necessitated by the reallocation of the original channel

any entity with a legitimate interest in this matter, their agreement to take the protective measures requested by the Bureau and APCO, and the Bureau's support of the proposed substitution, petitioners request the immediate grant of a construction permit for channel 19.²³ The petitioners also request that the Commission dismiss Shenandoah's tendered application for channel 19 and reject the arguments contained in a variety of allegedly unauthorized pleadings filed by Shenandoah.²⁴

DISCUSSION

13. For the reasons stated below, we find that the public interest would be best served in light of the circumstances of this case by authorizing the operation of a new analog television station on channel 19 in Charlottesville, subject to the express conditions requested by the Bureau and by APCO. We therefore approve the settlement agreement providing for the dismissal of Lindsay's application, the amendment of Achemar's application to specify CBC as the applicant, and the grant of CBC's application for channel 64. On our own motion we modify CBC's construction permit to specify operation on channel 19 in lieu of channel 64, and dismiss Shenandoah's tendered application for a construction permit for a new noncommercial educational station on channel 19. This action is appropriate to effectuate congressional intent regarding the reallocation of channel 64 for public safety use and to facilitate the resolution of one of the oldest comparative licensing cases pursuant to a settlement agreement that is subject to the special waiver provision set forth in Section 309(l)(3). And, in the circumstances of this case, we find for good cause that a notice and comment rulemaking is not required to add analog channel 19, Charlottesville to the Table of Allotments.

14. In approving the settlement agreement and awarding a construction permit for channel 64, we agree with CBC that Section 337 of the Act does not preclude authorization of a new analog television station on channel 64 in Charlottesville, Virginia. By its express terms, Section 337 provides only that television broadcast operations on channels 60-69 must cease at the end of the digital television transition period, currently scheduled to end by December 31, 2006.²⁵ Nothing in the accompanying legislative history, moreover, precludes the authorization of new television service on channels 60-69. Therefore, the authorization of a new analog television station on channel 64 in Charlottesville during the transition period is not statutorily barred. Consistent

for land mobile use and the permittee had acquiesced in the channel switch.

²³ See Responsive Comments of Achemar and Lindsay, filed August 12, 1999, at 2.

²⁴ See Consolidated Opposition to Unlawful Filings by W19BB, filed December 16, 1999, at 8. Joint Petitioners refer specifically to the following pleadings filed by Shenandoah: (1) Supplement to Shenandoah Valley Educational Television Corporation's Comments, filed on December 2, 1999; (2) a letter purporting to tender an FCC Form 340; and (3) a Motion to Enter Citizen Comments into the Record, filed on December 2, 1999.

²⁵ Section 337(e)(1) specifies that "[a]ny person who holds a television broadcast license to operate between 746 and 806 megahertz [channels 60-69] may not operate at that frequency after the date on which the digital television service transition period terminates, as determined by the Commission." Section 309(j)(14)(A) provides that "[a] television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond December 31, 2006."

with clear congressional intent that these channels be reallocated for public safety use as quickly as possible, however, we made a policy determination not to authorize any additional new analog stations on them so as to maximize the utility of the 746-806 MHz band for public safety use.²⁶ We nevertheless specifically recognized the unusual facts presented by this particular adjudicatory proceeding.²⁷

15. The award of a construction permit for a new analog station on channel 64 would, in our view, serve the public interest in light of the unique circumstances of this case.²⁸ The equities favoring these applicants are extraordinary. Consistent with Section 309(l)(3) providing for the waiver of regulatory provisions to facilitate settlements filed before February 1, 1998,²⁹ this would resolve one of the oldest comparative proceedings involving competing broadcast applications filed before July 1, 1997. Waiving the reallocation of channel 64 will also further the public interest by expediting long awaited, much needed television service to Charlottesville.³⁰ Moreover, as discussed below, we intend to modify the authorization to specify operation on Channel 19, thereby avoiding any possible impact on public safety use.

16. The proposed settlement agreement complies fully with 47 U.S.C. § 311(c) of the Communications Act and 47 C.F.R. § 73.3525(a) of the Commission's Rules governing settlement agreements among mutually exclusive broadcast applications. Attached to the applicants' Joint Petition are declarations from each party to the agreement stating that their respective applications were not filed for the purpose of reaching a settlement agreement. They further state that approval of the agreement will serve the public interest by expediting the initiation of new television service to the community and by conserving the resources of the private litigants and of the Commission. Additionally, the attached Shareholders' Agreement reflects a *bona fide* merger of the interests of Achnar and Lindsay that contemplates a genuine sharing of risks and rewards, as is required by Section 73.3525(a)(3) of the Rules. And, in any event, a waiver of that provision would be

²⁶ *Reallocation Report and Order*, 12 FCC Rcd at 22971-72 ¶ 40; *Reallocation Reconsideration Order*, 13 FCC Rcd at 21,581-82 ¶¶ 10-11.

²⁷ *Reallocation Reconsideration Order*, 13 FCC Rcd at 21581-82 ¶ 11.

²⁸ Given these conclusions regarding channel 64, it is unnecessary to entertain the alternative request to amend Achnar's application to specify operation on NTSC channel 19, and it may be dismissed. For the reasons stated below, however, we will on our motion modify the construction permit to specify operation on channel 19.

²⁹ See *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services (First Report and Order)*, 13 FCC Rcd 15920, 15,947-48 ¶ 73 (1998), *recon. denied*, FCC 99-74 (rel. Apr. 20, 1999), *petitions for reconsideration dismissed*, DA-445 (MMB Mar. 1, 2000).

³⁰ See *Dorothy O. Schulze and Deborah Brigham*, 13 FCC Rcd 3259, 3264 ¶¶ 10-11 (1998), *aff'd sub nom. Communications, Inc. v. FCC*, 168 F.3d 1354 (D.C. Cir. 1999), concluding that, notwithstanding our general public interest determination in the digital television proceeding to eliminate vacant NTSC allotments, it was equitable in the context of a longstanding comparative proceeding to take action to ensure that the community is not deprived of long-awaited television service. There, we instructed the Bureau to take appropriate steps to permit the filing of applications for that channel. The circumstances warranting relief are equally compelling here, given the special interference issues relating to the Observatory's use of channel 64 for astronomy activities, and the D.C. Circuit's explicit recognition of the competing public interest significance of Charlottesville's need for a second commercial television service.

consistent with Section 309(l)(3), since the agreement was executed before February 1, 1999. *See Gonzales Broadcasting, Inc.*, 12 FCC Rcd 12253, 12255-56 ¶ 10 (1997). We also grant the applicants' petition for leave to amend that is included in the Joint Petition, and accept the attached amendment substituting CBC as the applicant. The amendment is supported by good cause in that it facilitates resolution of this comparative proceeding.

MODIFICATION OF CONSTRUCTION PERMIT

17. Pursuant to our authority under Section 316(a) of the Communications Act, 47 U.S.C. § 316(a), and Section 1.87 of the Commission's rules, 47 C.F.R. § 1.87, to modify any construction permit if we determine that such action will promote the public interest, we will on our own motion modify CBC's construction permit to specify operation on channel 19, in lieu of channel 64. Modification of the construction permit will serve the public interest by furthering congressional intent regarding broadcast station operations on channels 60-69,³¹ and ensuring the station's operations have no possible impact on public safety use.

18. We agree with the joint petitioners that, given the circumstances of this case, the modification of CBC's permit does not require the initiation of further proceedings. Where the Commission proposes to modify a construction permit, the holder of that permit, as well as any permittee or licensee who believes its authorization would be modified by the proposed action, is entitled to protest. Further proceedings are not necessary under Section 316(a)(1) according CBC the right to protest, inasmuch as Achemar and Lindsay sought to amend to channel 19 in connection with their settlement agreement. CBC has therefore acquiesced in the modification, making further proceedings unnecessary. A similar situation arose in *Channel 16 of Rhode Island, Inc.*, 31 FCC 2d 574 (1971), where the channel originally applied for was reallocated for land mobile use. Deletion of the original channel was vacated by the court, and the Commission issued an Order to Show Cause why the construction permit should not be modified to specify an alternate channel. Based upon the permittee's subsequent acquiescence, however, the Commission modified the construction permit without further proceedings. We recognize that, as Shenandoah notes, the substituted channel in that case had been allotted to the community in question. Our authority to assign frequencies, however, is statutory, *see* 47 U.S.C. § 303(c),³² and nothing in Section 316 suggests that our authority to modify a construction permit, where the public interest is thereby served, is limited to previously allotted channels. Nor have Viacom and Shenandoah cited any precedent for such a restriction, or otherwise challenged our authority under Sections 303(c) and 316(a) to modify on our own motion the construction permit to specify operation on NTSC channel 19 in lieu of channel 64. And, although modification of CBC's permit requires an amendment to the Analog Table of Allotments, for the reasons set forth in paragraph 25 below, we find for good cause that a notice and comment rulemaking is not required to add channel 19, Charlottesville to the Table of Allotments.

³¹ *Reallocation Reconsideration Order*, 13 FCC Rcd at 21581 ¶ 10 ("[w]e believe that it was clearly the intention of Congress that channels 60-69 were to be reallocated with all due haste. . .").

³² Section 303 provides that "[e]xcept as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires shall . . . (c) [a]ssign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate."

19. Further proceedings are also unnecessary under Section 316(a)(2) according protest rights to licensees who believe their licenses would be modified by the proposed modification. As noted above, we sought comment on the proposal to use channel 19, and two existing licensees, Shenandoah and Viacom, challenged the petitioners' proposed use of that channel. To the extent that they rely upon potential interference with their licensed stations, the channel switch would not effect a modification of either license within the meaning of Section 316(a)(2). As the licensee of the channel 19 translator in Charlottesville, Shenandoah's authorization is, pursuant to the Commission's allocation rules, subject to displacement by a full-power station licensed to operate on that channel regardless of the quality of the non-commercial programming presented on the translator station. Its secondary status is not altered, moreover, by our prior action permitting full-power Station WVPT-TV (channel 51, Staunton), also licensed to Shenandoah, to move to DTV channel 11 so as to protect the continued use of the channel 19 translator station in Charlottesville.³³

At most, that action establishes the propriety of preserving the translator service to the extent possible in formulating the digital table of allotments; it does not, however, give Shenandoah any rights vis-a-vis an applicant for a full power television station on channel 19. Given the secondary status accorded to the channel 19 translator under our allocation rules, modifying CBC's construction permit to specify operation on channel 19 would not effect a modification of Shenandoah's license for that secondary service within the meaning of Section 316(a)(2). Moreover, the further, unsubstantiated assertion that the loss of the channel 19 translator would jeopardize the continued provision of high quality noncommercial programming through its main station does not raise a substantial and material question of fact that allowing the use of NTSC channel 19 in Charlottesville would effect a modification of Shenandoah's license for Station WVPT-TV in Staunton.

20. Nor is the secondary status of Shenandoah's channel 19 translator altered by its filing on January 28, 2000 of a certification of eligibility for Class A Low Power Television Status for the channel 19 translator.³⁴ As noted above, the enactment on November 29, 1999 of the CBPA amended Section 336 to require the establishment of Class A low power television service. As required by Section 336(f)(1)(B), Shenandoah has submitted a certification of eligibility indicating its intent to file an application for a Class A Low Power Television license for channel 19. It alleges that, with the exception of the designation as a low power licensee, the translator service currently provided on channel 19 complies with all of the requirements for Class A status. Even assuming that there is a basis for a public interest determination to treat the channel 19 translator as a qualifying low power television station within the meaning of Section 336(f)(2),³⁵ the Commission could not grant a Class A license for channel 19 in Charlottesville. Section

³³ *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, 13 FCC Rcd 7418, 7519-20 ¶ 298 (1998). (Allotment Reconsideration Order).

³⁴ See *Public Notice: Mass Media Bureau Implements Community Broadcasters Protection Act of 1999*, 96891, released December 13, 1999. See also 47 U.S.C. § 336(f)(1)(B).

³⁵ Shenandoah requests that the Commission certify eligibility pursuant to Section 336(f)(2)(B), providing that "For purposes of this subsection, a station is a qualifying low-power television station if . . . (B) the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission."

336(f)(7)(A)(i) prohibits the grant of a Class A license absent a showing that it “will not cause interference within the predicted Grade B contour (as of the date of enactment of the Community Broadcasters Protection Act . . . , or as proposed in a change application filed on or before such date) of a station operating in analog format.” Petitioners’ predicted Grade B contour for channel 19, as proposed on June 24, 1998, is entitled to protection under that provision, and implementing Commission rules, because their settlement agreement proposing a reasonably ascertainable predicted Grade B contour was pending on November 29, 1999, the date of enactment of the CBPA.³⁶ Specifically, the settlement agreement, as supplemented on June 24, 1998, proposes “operation on channel 19 instead of channel 64, at the same transmitting location and with substantially the same technical facilities.”³⁷ Thus, Shenandoah will be unable to show, as required by Section 336(f)(7)(A)(i), that a class A low power television license on channel 19 will not cause interference within petitioners’ predicted Grade B contour that was proposed as of November 29, 1999. Its timely submission of a certification of eligibility for Class A Low Power Television Status for the channel 19 translator is therefore not an impediment to our action herein approving petitioners’ January 30, 1998 settlement agreement and modifying the construction permit to specify operation on channel 19.

21. We note, however, that Central Virginia Educational Telecommunications Corporation, currently operating Station WHTJ(TV) (Charlottesville) on NTSC channel *41, has filed a petition for rulemaking requesting an amendment to the Table of Allotments for Digital Television. It seeks to change the DTV channel allotment for station WHTJ-DT in Charlottesville from channel 14 to channel 46. We direct the Mass Media Bureau to expedite consideration of the proposed move to channel 46, grant of which could make channel 14 available for secondary television service in Charlottesville. To avoid disruption of its current translator service on channel 19, Shenandoah may wish to submit a displacement application for channel 14 to be processed by the Mass Media Bureau in accordance with its usual procedures. We note further that the Commission has proposed to institute a further rulemaking proceeding seeking comment on whether translators should be accorded some form of primary status.³⁸ Depending upon the outcome of that proceeding and subject to any eligibility criteria developed therein, Shenandoah could seek such primary status if it is ultimately authorized to provide television translator service

³⁶ *Establishment of a Class A Television (Report and Order)*, MM Docket No. 00-10, FCC 00-115 ¶¶ 44, 46 (adopted Mar. 28, 2000) (“[W]e will require Class A applicants to protect the facilities proposed in any application for full-power analog facilities that was pending on November 29, 1999, that had completed all processing short of grant as of that date, and for which the identity of the successful applicant is known. The applications in this latter category are post-auction applications, applications proposed for grant in pending settlements, and any singleton applications cut off from further filings. . . . [T]he best interpretation of . . . [Section 336(f)(7)(A)(i)] . . . is that it [requires protection of such] facilities proposed in applications pending as of November 29, 1999 . . . for which there is a single, reasonably ascertainable predicted Grade B contour as of that date”).

³⁷ Supplement to Joint Petition for Approval of Settlement Agreement, filed June 24, 1998, by Achnar Broadcasting Company and Lindsay Television, Inc. at 1. Initially, the settlement agreement was “contingent upon the grant of a construction permit for Channel 64 (or such other channel as the Commission may designate).” Joint Petition for Approval of Settlement Agreement, For Leave To Amend Application and For Immediate Grant of Construction Permit, filed January 30, 1998, by Achnar Broadcasting Company and Lindsay Television, Inc. at 1-2.

³⁸ *Establishment of Class A Television Service (Report and Order)*, FCC 00-115 (adopted Mar. 28, 2000) at ¶ 35.

on channel 14.

22. Viacom also claims that it would be adversely impacted by authorization of analog operation on channel 19 in Charlottesville. In contrast to Shenandoah, however, it does not allege that the proposed use of channel 19 will modify its current authorization for Station WGNT-DT (Portsmouth). Rather, it claims that interference will result if *its* current license for digital channel 19 is modified in the future to permit operation at increased power. As the Bureau notes, however, Commission regulations do not accord Viacom a right to maximize the power at the Portsmouth station, and the Bureau, based on its engineering analysis, has indicated that the presence of an analog television station on channel 19 at Charlottesville will not detrimentally affect the digital table of allotments. Thus, the channel switch would not effect a modification of Viacom's current license for Station WGNT-DT.³⁹ There is presently no vacant digital allotment for Charlottesville, and although CBC would be given an opportunity to amend to a digital channel at the end of the DTV transition period, the future availability of channel 19 for that purpose remains to be determined.⁴⁰ The DTV allotment for WGNT-TV, Portsmouth, therefore, neither bars the modification of CBC's construction permit, nor warrants the grant of the NTSC permit subject to the express condition, requested by Viacom, that CBC could not oppose any future WGNT-TV maximization proposal up to and including one megawatt. Thus, neither Shenandoah nor Viacom has alleged an interest that is legally protected under the Commission's rules and policies or that would be adversely impacted by modifying CBC's construction permit. Nor have they raised a substantial and material question of fact requiring a hearing to determine whether the proposed modification would serve the public interest. Such modification, therefore, does not necessitate the institution of further proceedings to explore the objections raised by Viacom and Shenandoah.

23. One additional matter warrants comment. Operation on NTSC channel 19 would, as Lindsay and Achnar conceded in seeking to amend to that channel, be slightly short-spaced with WGNT-DT, as currently authorized.⁴¹ An engineering statement filed in support of the amendment to NTSC channel 19 assertedly demonstrates satisfaction of the interference standards

³⁹ See *WBEN, Inc. v. FCC*, 396 F.2d 609 (D.C. Cir. (D.C. Cir. 1961), finding that a modification had occurred where Commission granted an unconditional construction permit authorizing presunrise operations that, if used, would cause interference to the appellant, even though the rules permitted the Commission to order cessation of the presunrise operation if it caused undue interference. In contrast to the situation in *WBEN*, where the license was deemed modified within the meaning of the statute by the grant of an unconditional permit, the substitution of channel 19 does not impact on the current license for WGNT-DT; any adverse impact on WGNT-DT would occur in the future only if the Commission ultimately increases the authorized power for Station WGNT-DT.

⁴⁰ The Commission has indicated that it would be equitable, where possible, to permit new analog permittees, whose applications are granted after April 3, 1997 and are thus ineligible for an initial paired digital license, to participate in the conversion to digital television. *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order* in MM Docket No. 87-268, 13 FCC Rcd 6860, 6865 ¶¶ 11-12 (1998); *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348, 1359-60 ¶¶ 26-27 (1998). Specifically, it has determined that pending NTSC applicants will not receive a paired DTV channel with the analog channel they are granted, but would have an opportunity to convert to digital television on the channel they were granted so long as the proposed DTV station protects all DTV and NTSC stations. *Id.* at 1359-60 ¶ 27.

⁴¹ The required spacing is 244.6 kM and the actual spacing is 220.9 kM. See Viacom's Informal Objections, Appendix 1, at 2-4.

set forth in Section 73.623.⁴² Shenandoah disputes that showing and submits that there has not been a good cause showing warranting a waiver of the short-spacing rules.⁴³ Significantly, however, Viacom, the ultimate licensee of WGNT-DT, does not oppose the substitution of channel 19 on this basis. The Bureau, moreover, has indicated that the addition of NTSC channel 19 in Charlottesville would not detrimentally affect the digital channel 19 allotment. In these circumstances, and particularly since Shenandoah lacks standing under Section 316(a)(2) to complain of the possible impact of the proposed action on another licensee, we find no substantial and material questions of fact that the short-spacing between NTSC channel 19, Charlottesville and WGNT-DT, Portsmouth would result in cognizable interference.

24. In connection with the applicants' request to amend Achnar's pending application for channel 64 to specify channel 19, Shenandoah and Viacom urged that the substitution of channel 19 for channel 64 would impermissibly short-circuit procedures requiring the institution of a rulemaking proceeding to allot channel 19 to Charlottesville, as well as a competitive licensing proceeding to select the licensee for channel 19. In light of our determination to grant the construction permit for channel 64 but modify it to specify operation on channel 19, we need not entertain competing applications for channel 19. As discussed above, Section 316(a) of the Act requires that we entertain protests from licensees or permittees who believe their license would be modified by the proposed action, and we have considered such protests from Shenandoah and Viacom. We are not required, however, to entertain competing applications. Nor would it make sense to do so since the license grant in question is a narrow exception to our general policy of not accepting additional NTSC applications. See n.30, *supra*, n.45, *infra*. Shenandoah's application for channel 19, tendered in response to the Mass Media Bureau's November 22, 1999 Public Notice is, in any event, beyond the scope of that Public Notice. The Public Notice affords a window filing opportunity only to persons who filed rulemaking petitions on or before July 25, 1996 to add an NTSC channel to the TV Table of Allotments and to persons with applications for new full-service NTSC television that were filed before September 20, 1996 or that were filed after that date in response to a valid cutoff list.⁴⁴ *Public Notice, supra* n.8, at 2. Moreover, in accordance with the Commission's competitive bidding rules, the Public Notice provides that "wherever two or more applications were pending for the same allotment before July 1997, the group is closed and no additional applications for the allotment (on the new channel) will be accepted." *Id.*, at 6. Achnar's and Lindsay's competing applications for channel 64 were filed in 1986 and their proposed settlement is contingent on the immediate grant of a construction permit for channel 64 or such other channel as the Commission shall select. In these circumstances, the Public Notice provides no basis to accept Shenandoah's tendered application for channel 19, and it is therefore dismissed.

25. We also recognize that the modification of CBC's license to specify operation on channel 19, in lieu of channel 64, requires an amendment to the Table of Allotments. But we find

⁴² *Id.* Appendix I, Table II and Figures 4-7.

⁴³ Comments of Shenandoah Valley Educational Association, filed July 28, 1999, at 9.

⁴⁴ The *Public Notice* provides that a channel change cannot be accomplished by an amendment to a pending application, but expressly exempts the instant settlement request for channel 19 in Charlottesville from the requirement that a channel change must be requested by a petition for rulemaking. *Public Notice* at n. 9.

for good cause, pursuant to 5 U.S.C. § 553(b)(3)(B), that a notice and comment rulemaking is not required in these circumstances. No purpose would be served by initiating a notice and comment proceeding to allot NTSC channel 19 to Charlottesville. First, analog television is a mature broadcast service, and analog channel 19 is, due to existing assignments of that channel, not available for allotment to any comparable community other than Charlottesville. Second, due to the imminent switch to digital television, the Analog Table of Allotments has ceased to function as a evolving mechanism to be modified to reflect changing needs and technology.⁴⁵ Instead it exists solely to preserve the status quo (and in particular, interference-free analog television service) during the DTV transition. And, in contrast to any amendment to the Analog Table of Allotments that may be filed during the window filing opportunity announced in the November 22, 1999 Public Notice, the Mass Media Bureau has affirmatively stated that allotting analog channel 19 to the community of Charlottesville detrimentally affects neither the Analog Table of Allotments nor the Digital Table of Allotments, provided the channel 19 permit for Charlottesville is conditioned so as to protect existing NTSC channel 19 allotments in Jacksonville, North Carolina, Kingsport, Tennessee, and Jeanette, Pennsylvania. CBC's agreement to accept that condition adequately protects the public's interest in maintaining interference-free analog television service as well as the interests of existing licensees authorized to operate full-service television stations on analog channel 19. Adding analog channel 19 to the Table of Allotments is, in sum, an essentially ministerial act designed purely to ensure the continuing accuracy of the Table. In these circumstances, a notice and comment rulemaking is not required to protect the procedural rights of the listening public, of existing licensees, or of any other party potentially affected by such allotment.

26. Finally, we address two ancillary matters involving the agreement with the Observatory. First, we agree with the Bureau that, although the technical proposal for channel 19 does not comply fully with Section 73.685(e) of the rules, it is nevertheless acceptable because the proposed antenna pattern with a null in excess of 15 dB was designed to accommodate the needs of the Observatory.⁴⁶ Second, Achnar, by its November 19, 1997 petition for leave to amend and attached amendment, submitted for filing translator applications for the cities of Staunton and Waynesboro, Virginia that are still an integral part of the agreement with the Observatory, despite the switch to channel 19.⁴⁷ As the Bureau notes, the translators are not yet eligible for permanent

⁴⁵ Specifically, the Commission, in order to maximize the spectrum available to facilitate that transition, announced in July 1996 that it would no longer accept petitions for rulemaking to amend the Analog Table of Allotments, and that as of September 20, 1996, it would not accept applications for NTSC channels specified on the Table. *Advanced Television Systems and their Impact upon the Existing Television Broadcast Service (Sixth Further Notice)*, 11 FCC Rcd 10968, 10992 (1996). And, absent extraordinary circumstances, an existing NTSC allotment that becomes vacant is routinely deleted from Table. See *Dorothy O. Schulze and Deborah Brigham, supra* n.30, in which the Commission directed the Mass Media Bureau to accept competing applications for an analog television channel after termination of a comparative licensing proceeding in which all of the applicants were found unqualified to be a Commission licensee.

⁴⁶ Section 73.685(e) provides that "Stations operating on channels 14-69 with transmitters delivering a peak visual power output of more than 1 kW may employ directive transmitting antennas with a maximum to minimum radiation in the horizontal plane of not more than 15 dB." Here a maximum visual effective radiated power of 2380 kW is proposed with an antenna pattern indicating a null of 20.6 dB in the direction of the Observatory.

⁴⁷ See Supplement to Agreement, executed June 1, 1998, at ¶ 3, providing "The Observatory has no objection to the substitution of channel 19 for channel 64 under the agreement so long as the "equivalent protection" and other provisions in ¶ 6 of the Agreement govern." Paragraph 4 of the Agreement, which is not modified by the Supplement,

licenses because the applications were not filed within an announced filing window, as the rules then in effect required.⁴⁸ Pursuant to Sections 74.780 and 73.1635 of the Rules and as supported by the Mass Media Bureau, we grant special temporary authority for operation of the translators, but refer the television translator applications to the Bureau for handling in accordance with its usual procedures.⁴⁹

ORDERING CLAUSES

27. ACCORDINGLY, IT IS ORDERED, That the Motion to Enter Citizen Comments Into The Record, filed on December 2, 1999, by Shenandoah Valley Educational Television Corporation IS GRANTED.⁵⁰

28. IT IS FURTHER ORDERED, That the Joint Petition For Approval of Settlement Agreement, For Leave To Amend Application and For Immediate Grant of Construction Permit, filed January 30 1998 by Achemar Broadcasting Company and Lindsay Television, Inc. IS GRANTED, the attached Settlement Agreement IS APPROVED and the attached Amendment to the application of Achemar Broadcasting Company IS ACCEPTED; that good cause having been shown, the Petition For Leave To Amend and For Waiver of Short Spacing Rule, filed November

provides that "the licensee may operate one or two television translators to provide service to the Staunton and Waynesboro, Virginia areas within the National Radio Quiet Zone"

⁴⁸ Since 1984 the Commission's processing rules have required that television translator applications for new stations or for major modifications of the facilities of existing stations may be filed only on dates specified by the Commission, 47 C.F.R. § 73.3564(d), and our practice has been to announce such windows periodically. *See Low Power Television and Television Translator Service (Report and Order)*, 102 FCC 2d 295, 297-98 ¶ 5 (1984). In connection with the adoption of competitive bidding procedures for commercial broadcast applications, we have revised our processing rules to require the filing within a publicly announced auction filing window of virtually all commercial broadcast and secondary broadcast applications for new facilities or for major modifications of existing facilities. *First Report and Order*, 13 FCC Rcd at 15972-73 ¶¶ 136-38.

⁴⁹ In referring this matter to the Bureau, we note that the translators are necessitated by the agreement with the Observatory. For this reason, we believe that the public interest considerations reflected in this order are relevant and may be given weight in conjunction with the handling of the television translator applications.

⁵⁰ Attached to the Motion are letters from Members of Congress and numerous citizens supporting Shenandoah's opposition to the grant of a construction permit for channel 19. Pursuant to Sections 0.251(c) and (h), 1.41, and 1.47(g) of the Rules, Shenandoah requests that the citizens' letters be placed in the record. No party to this adjudicatory proceeding will be harmed by entry of the attached letters into the record in MM Docket No. 86-440. With one exception, each of the letters was mailed to the parties in this proceeding at the time of their submission to the Commission. Although the certificate of service was inadvertently omitted from the original submission, Section 1.47(g) of the rules provides that proof of service may be supplied at any time, provided that this will not materially prejudice the parties. Shenandoah has verified that, with one exception, it contemporaneously mailed copies of the submission to all of the parties and has adequately explained the circumstances relating to the submission of one letter that was not contemporaneously mailed to the parties. *See Letter*, dated November 8, 1999, from Jonathan D. Blake, Counsel, Shenandoah Valley Educational Television, to David S. Senzel, Esq., Administrative Law Division, Office of General Counsel, Federal Communications Commission. Given counsel's verification that all of the correspondence has been served on the parties and that the Commission's *ex parte* rules have been complied with, entry of the citizens' letters into the record will not, in our view, prejudice any party to this proceeding.

19, 1997 by Achernar Broadcasting Company IS GRANTED in part and DISMISSED in part,⁵¹ the attached amendment IS ACCEPTED in part, and the attached translator applications ARE REFERRED to the Mass Media Bureau; that the application of Lindsay Television, Inc. (File No. BPCT-860410KQ) IS DISMISSED; that the application for a construction permit for channel 64 of Achernar Broadcasting Company (File No. BPCT-860410 KP), as amended to substitute Charlottesville Broadcasting Corporation, IS GRANTED to the extent reflected herein, and that the following pleadings ARE DISMISSED: (a) Petition For Leave to Amend and Supplement thereto, filed September 19, and September 22, 1997, respectively, by Lindsay Television, Inc.; (b) Petition For Waiver of Short Spacing Rules filed on November 5, 1997 by Lindsay Television, Inc.; (c) Petition For Acceptance of Television Translator Applications and Request For Waivers, filed on December 8, 1997, by Lindsay Television, Inc.; and (d) Supplement to Shenandoah Valley Educational Television Corporation's Comments and the attached FCC Form 340, tendered for filing on December 2, 1999, by Shenandoah Valley Educational Television Corporation.

29. IT IS FURTHER ORDERED, That, pursuant to 47 U.S.C. §§ 4(i) and 303(g) of the Communications Act, effective 30 days after the release of this Memorandum Opinion and Order, the Table of Television Allotments, as specified in 47 C.F.R. § 73.606(b) IS AMENDED as follows:

Charlottesville, Virginia Channels 19-, 29-, *41-

30. IT IS FURTHER ORDERED, That, pursuant to 47 U.S.C. § 316(a), Charlottesville Broadcasting Corporation's construction permit for a new NTSC station on channel 64 IS MODIFIED to specify operation on channel 19, effective 30 days after the release of this Order and SUBJECT TO THE FOLLOWING CONDITIONS:

- (1) The station must install and maintain a filter on its channel 19 transmitter providing 75-80 dB of attenuation in the 494-500 MHz band (channel 18);
- (2) The station must accept interference from current or future 494-500 MHz land mobile facilities operating from base stations located within 50 miles of Washington, D.C., and mobile units operating within 30 miles of their associated base station; and
- (3) The station must include a minus offset to protect NTSC channel 19 allotments in Jacksonville, North Carolina, Kingsport, Tennessee, and Jeanette, Pennsylvania.

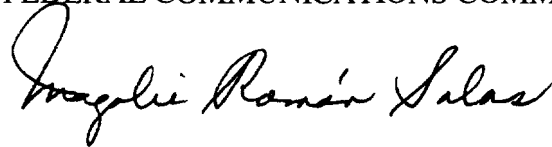
31. IT IS FURTHER ORDERED, That the Supplement to Joint Petition for Approval of Settlement Agreement, For Leave to Amend Application and For Immediate Grant of Construction Permit, filed June 24, 1998 by Achernar Broadcasting Company and Lindsay Television, Inc. IS DISMISSED.

⁵¹ Achernar seeks to amend to a new transmitter site, located after an extensive search, to accommodate the interference concerns of the Observatory. The amendment is supported by good cause in that it resolves a potentially disqualifying interference issue and adequately protects from broadcast interference certain operations at the Observatory's facility in Green Bank. That portion of the pleading seeking a waiver of the short-spacing rules, however, relates to channel 64 and is therefore moot.

32. IT IS FURTHER ORDERED, That Charlottesville Broadcasting Corporation IS GRANTED SPECIAL TEMPORARY AUTHORITY to operate translators on channels 11 and 9, respectively, at Staunton and Waynesboro, Virginia.

33. IT IS FURTHER ORDERED, That the adjudicatory proceeding in MM Docket No. 86-440 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Magalie Roman Salas". The signature is written in a cursive, flowing style.

Magalie Roman Salas
Secretary